Haji Said Haji Bujang v The Public Service Commission of the State of Sarawak

HIGH COURT (KUCHING) — SUIT NO KG71 OF 1989
CLEMENT SKINNER J
7 AUGUST 2007

Administrative Law — Rights and liabilities of public servants — Dismissal — Involvement in political activities during election campaign — Plaintiff not informed of decision of committee of inquiry on each of four charges against him — Whether breach of r 26(9) of Public Service Commission Rules 1964 (Sarawak)

Administrative Law — Rights and liabilities of public servants — Dismissal — Involvement in political activities during election campaign — Whether any credible evidence to incriminate plaintiff of charges against him — Whether committee of inquiry had taken into account matters extraneous and irrelevant to the charge — Whether event outside period covered by the charge ought to be excluded by the committee — Sarawak General Orders GO 91(1)(g)

Administrative Law — Rights and liabilities of public servants — Dismissal — Involvement in political activities during election campaign — Whether plaintiff must be given opportunity to be considered for alternative punishment under r 23(1) Public Service Commission Rules 1964 (Sarawak) — Sarawak General Orders GO 91(1)(g)

Haji Said Haji Bujang v The Public Service Commission of the State of Sarawak The plaintiff, formerly an Assistant Director, Grade A9 at the Lands and Surveys Department, Kuching was dismissed from service of the State Government of Sarawak by the defendant on 1 April 1988 for contravening r 91(1) (g) of the Sarawak General Orders. The charge against the plaintiff was that he during the campaign period of the State Election 1987 between 6 April 1987 and 14 April 1987, had involved himself in political activities, including campaigning for candidates of PERMAS Party on four counts, in that he had: (1) exhibited or caused to be exhibited or allowed to be exhibited posters or stickers which bear the slogans of PERMAS Party and photograph of the President of the party Tun Rahman on the wall of his house and hoisted or caused to be hoisted the flag of PERMAS in front of his house at Jalan Abong Taip; (2) made copies of an article 'The Truth', which was

published in the Sarawak Tribune on 13 April 1987 and distributed copies of the article to the staff at the Headquarters and Divisional Offices of the Lands and Surveys Department with the intention of drawing the attention of the staff of the Department that the Barisan Nasional Government under the leadership of the Honourable Chief Minister, Sarawak, was not fair to him; (3) during the campaign period had openly campaigned in the Lands and Surveys Department among the staff to vote for PERMAS candidates on 16 April 1987; and (4) had used his own motor vehicle KF2121 to transport voters on 16 April 1987 to cast their votes and had decorated his car with the flag and photograph of the President of PERMAS Party. The plaintiff denied the charge. Hearing on the disciplinary action against the plaintiff by the defendant was conducted by a committee of inquiry ('the committee'). By letter dated 11 March 1988 the defendant was informed of his dismissal. The plaintiff appealed to the defendant for reconsideration of the punishment meted out and brought up to the attention of the defendant two issues, namely: (1) the defendant was in breach of r 26(9) of the Sarawak Public Service Commission Rules 1964 for failing to communicate to the plaintiff the decision on each charge preferred against him; and (2) that r 23(1) provides various forms of punishment, and he pleaded for an alternative punishment, ie retirement. The defendant rejected the appeal. The plaintiff, being dissatisfied with the defendant's decision filed this suit in which he sought a declaration that the decision made by the defendant terminating the service of the plaintiff as Assistant Director of the State Land and Survey Department was null and void and other reliefs.

The issues for determination by the court was whether the dismissal of the plaintiff was without legal justification, unlawful and was therefore null and void in that: (1) the plaintiff was not afforded a complete and reasonable opportunity to be heard before the decision to dismiss was made; (2) the decision on each of the four counts against the plaintiff was not communicated to him by the commission as required by r 26(9) of the Public Service Commission Rules 1964; (3) the decision was manifestly erroneous on the face of the record as there was no credible evidence on which to incriminate the plaintiff on the four counts preferred against him; and (4) whether the commission failed in its statutory duty under the rules that the plaintiff must be given the opportunity of being considered for an alternative punishment under r 23(l) Public Service Commission Rules 1964.

Held, granting the declaration:

(1) The plaintiff was properly informed of the four counts that were preferred against him. The four counts were also stated with sufficient clarity and particulars. The plaintiff was also given sufficient time and proper opportunity to meet those charges. Further, there had been no complaint, whether at this court or before the committee that the

committee was not properly constituted or was constituted or consisted of members who had an interest in the outcome of the inquiry. With regard to the procedures adopted at the enquiry itself, there was no irregularity. The plaintiff was represented by a lawyer of his choice, he was given an opportunity to address the committee and produce documents and witnesses. So the plaintiff had no cause to complain that he was not afforded a complete and reasonable opportunity to be heard before the decision to dismiss him was made (see paras 21–22).

(2) Even though the defendant had informed the plaintiff that he faced one charge, in substance each of the four counts constituted a charge preferred against him. Since the defendant had in substance preferred four charges against the plaintiff, he should have been informed of the decision on each of the four charges. In failing to do so the defendant had acted in breach of r 26(9) of the Public Service Commission Rules 1964. In this sense, the plaintiff had not been accorded the procedural fairness envisaged in the rules (see paras 29 & 31).

(3) On the first count, the plaintiff would only be in breach of GO 91(1)(g) if by allegedly displaying or exhibiting or causing to be displayed or exhibited or in allowing to be displayed or exhibited the two offending items at his house, the plaintiff was engaging in canvassing in support of a candidate or candidates at an election. But the committee did not ask itself any questions about whether what the plaintiff was alleged to have done amounted to canvassing in support of a candidate or candidates at an election. It was important for the committee of inquiry to ask themselves the necessary questions in this regard or to make some finding in that regard because if the plaintiff was not canvassing in support of a candidate or candidates at an election by hoisting the PERMAS flag and displaying a photograph of Tun Rahman at his house, then no breach of GO 91(1)(g) had occurred at all. Also, it was submitted on behalf of the defendant that since the plaintiff was the owner of the house and head of his household, his wife Hajjah Fatimah and his brother must have had his approval or at least his tacit approval to put up the two offending items in his house. This court disagreed with this finding. Given the state of the evidence before the committee relating to the first count, its positive findings was unreasonable, in the sense that it was so devoid of any plausible justification that no reasonable body of persons would have reached it (see paras 42–44, 47).

(4) On the second count, given the fact that the substance of the accusation against the plaintiff on this count was that he had: (a) made copies of the article; and (b) had distributed the article in the Department with the intention of showing that the State Government of Sarawak under the leadership of the Honourable Chief Minister was unfair to him, and given the fact that the committee had found no evidence to substantiate

either of the accusations in (a) or (b) of the charge, it was reasonable to conclude that the committee did not find this count proved or established against the plaintiff despite its 'positive' findings on this count (see para 49).

(5) The accusation that the plaintiff was seen at a wedding party wearing a white songkok with a PERMAS badge on it constituted an additional charge against the plaintiff. The committee had taken into account matters extraneous and irrelevant to the third count and had made positive findings on a matter the plaintiff was never charged with in the third count. In doing so the committee had committed a procedural impropriety which had severely prejudiced the plaintiff since he was not to know that the committee would act on such evidence. It was not open to the committee to consider and thereafter act on that evidence without following the procedures laid down in r 26(6) (see paras 53 & 55).

(6) The fourth count must be struck down for procedural impropriety, in that, it related to an event which allegedly took place on 16 April 1987 which was a date outside the period covered by the charge, ie between 6 April 1987 and 14 April 1987. Hence the evidence about the plaintiff having driven a car with Tun Rahman's picture affixed to it was irrelevant to the charge. Accordingly, what the plaintiff did outside the period was irrelevant to the charge and should have been excluded and not acted on by the committee in its decision making process (see paras 58–59).

(7) In view of what the r 26(1) (b) states, since the plaintiff was notified in the defendant's show cause letter that disciplinary action was being taken against him under r 26(1)(b), the plaintiff had been put on notice that such disciplinary action was being taken against him with a view to his dismissal if the allegations against him were proved. It was open to the plaintiff to have addressed the defendant on the appropriate punishment to be imposed on him when he wrote his letter to show cause against the charges(s) made against him. If he chose not to do so, then he could not be heard to complain later that he had not been afforded an opportunity to be heard on the punishment to be imposed on him if the charge(s) are proved (see paras 69–70).

[Bahasa Malaysia summary

Plaintif, bekas Timbalan Pengarah, Gred A9 di Jabatan Tanah dan Jurukur, Kucing telah dipecat daripada perkhidmatan Kerajaan Negeri Sarawak oleh defendan pada 1 April 1988 kerana telah melanggar peraturan 91(1)(g) Peraturan-Peraturan Am Sarawak. Pertuduhan terhadap plaintif adalah bahawa beliau semasa tempoh kempen Pilihanraya Negeri 1987 antara

6 April 1987 dan 14 April 1987, telah melibatkan dirinya dalam kegiatan politik, termasuklah berkempen untuk calon-calon Parti PERMAS atas empat pertuduhan, yang mana beliau telah: (1) mengekshibit atau menyebabkan diekshibitkan atau membenarkan untuk diekshibitkan poster-poster atau pelekat-pelekat yang tertera slogan Parti PERMAS dan gambar Presiden parti Tun Rahman pada dinding rumahnya dan menaikkan atau menyebabkan dinaikkan bendera PERMAS di hadapan rumahnya di Jalan Abong Taip; (2) membuat beberapa salinan artikel 'The Truth', yang telah diterbitkan dalam Sarawak Tribune pada 13 April 1987 dan mengedarkan salinan-salinan artikel itu kepada kakitangan di Ibu Pejabat dan Pejabat Bahagian Jabatan Tanah dan Jurukur dengan niat untuk menarik perhatian kakitangan Jabatan bahawa Kerajaan Barisan Nasional di bawah pimpinan Yang di Pertua Ketua Menteri Sarawak, telah berlaku tidak adil terhadapnya; (3) semasa tempoh kempen telah melakukan kempen secara terang-terangan di Jabatan Tanah dan Jurukur di kalangan kakitangan untuk mengundi calon-calon PERMAS pada 16 April 1987; dan (4) telah menggunakan kenderaan motor sendirinya KF2121 untuk membawa pengundi-pengundi pada 16 April 1987 untuk membuat undian mereka dan menghias keretanya dengan bendera dan gambar Presiden Parti PERMAS. Plaintif telah menafikan pertuduhan tersebut. Perbicaraan berhubung tindakan tatatertib terhadap plaintif oleh defendan telah dikendalikan oleh satu jawatankuasa siasatan ('jawatankuasa tersebut'). Melalui surat bertarikh 11 Mac 1988 defendan telah dimaklumkan tentang pemecatannya. Plaintif telah merayu kepada defendan untuk menimbang semula hukuman yang dijatuhkan dan membawa kepada perhatian defendan dua isu, iaitu: (1) defendan telah melanggar k 26(9) Kaedah-Kaedah Jawatankuasa Perkhidmatan Awam Sarawak 1964 kerana gagal memaklumkan kepada plaintif keputusan setiap pertuduhan yang dibuat terhadapnya; dan (2) bahawa k 23(1) memperuntukkan pelbagai bentuk hukuman, dan beliau merayu untuk satu hukuman alternatif, iaitu persaraan. Defendan telah menolak rayuan itu. Plaintif, berasa tidak puas hati dengan keputusan defendan telah memfailkan guaman ini yang mana beliau memohon satu deklarasi bahawa keputusan yang dibuat oleh defendan menamatkan perkhidmatan plaintif sebagai Timbalan Pengarah Jabatan Tanah dan Jurukur Negeri adalah terbatal dan tidak sah dan relif-relif lain.

Isu-isu untuk ditentukan oleh mahkamah adalah sama ada pemecatan plaintif tanpa justifikasi yang sah, tidak sah dan oleh itu adalah terbatal dan tidak sah yang mana: (1) plaintif tidak diberikan peluang sepenuhnya dan munasabah untuk didengar sebelum keputusan untuk memecat dibuat; (2) keputusan untuk setiap pertuduhan terhadap plaintif tidak dimaklumkan kepadanya oleh jawatankuasa tersebut seperti yang dikehendaki oleh k 26(9) Kaedah-Kaedah Jawatankuasa Perkhidmatan Awam Sarawak 1964; (3) keputusan itu salah berdasarkan rekod di mana tiada keterangan yang boleh dipercayai yang menjejaskan plaintif atas empat pertuduhan yang dibuat

terhadapnya; (4) sama ada jawatankuasa tersebut telah gagal dalam tanggungjawab statutorinya di bawah kaedah itu di mana plaintif hendaklah diberikan peluang untuk dipertimbangkan bagi hukuman alternatif di bawah k 23(1) Kaedah-Kaedah Jawatankuasa Perkhidmatan Awam Sarawak 1964.

Diputuskan, membenarkan deklarasi tersebut:

(1) Plaintif telah dimaklumkan dengan sewajarnya tentang empat pertuduhan yang dibuat terhadapnya. Keempat-empat pertuduhan tersebut juga telah dinyatakan dengan butiran yang jelas. Plaintif juga telah memberikan masa yang mencukupi dan peluang sewajarnya untuk menghadapi pertuduhan-pertuduhan tersebut. Tambahan pula, tiada aduan, sama ada di mahkamah ini atau di hadapan jawatankuasa tersebut bahawa jawatankuasa tersebut tidak dibentuk dengan betul atau dibentuk atau mengandungi ahli-ahli yang mempunyai kepentingan dalam hasil siasatan tersebut. Berdasarkan prosedur yang digunakan semasa siasatan itu, tiada ada salah aturan. Plaintif telah diwakili oleh seorang peguam pilihannya, beliau telah diberikan peluang untuk berhadapan dengan jawatankuasa tersebut dan mengemukakan dokumen-dokumen dan saksi-saksi. Oleh itu plaintif tiada sebab untuk mengadu bahwa beliau tidak diberikan peluang yang sepenuhnya dan sewajarnya untuk didengar sebelum keputusan untuk memecatnya dibuat (lihat perenggan 21–22).

(2) Meskipun defendan telah memberitahu plaintif bahawa beliau berhadapan dengan satu pertuduhan, secara menyeluruh setiap daripada empat pertuduhan itu membentuk satu pertuduhan yang dibuat terhadapnya. Memandangkan defendan telah membuat empat pertuduhan terhadap plaintif, beliau patut diberitahu tentang keputusan setiap daripada empat pertuduhan tersebut. Dengan kegagalan untuk berbuat sedemikian defendan telah bertindak melanggar k 26(9) Kaedah-Kaedah Jawatankuasa Perkhidmatan Awam Sarawak 1964. Dalam erti kata lain plaintif tidak diberikan keadilan prosedur yang termaktub dalam kaedah-kaedah tersebut (lihat perenggan 29 & 31).

(3) Atas pertuduhan pertama, plaintif hanya melanggar peraturan am 91(1)(g) jika dengan mengatakan telah mempamerkan atau mengekshibitkan atau menyebabkan dipamerkan atau diekshibitkan atau membenarkan dipamerkan atau diekshibitkan dua item yang tidak sepatutnya di rumahnya, plaintif terlibat dalam memancing undi untuk calon atau calon-calon di dalam pilihanraya. Namun jawatankuasa tersebut tidak menanyakan sendiri apa-apa persoalan tentang sama ada apa yang didakwa telah dilakukan oleh plaintif membentuk pancingan undi untuk calon atau calon-calon dalam pilihanraya. Adalah penting

untuk jawatankuasa siasatan bertanyakan sendiri soalan-soalan wajar berkaitan ini atau membuat penemuan berdasarkannya kerana plaintif tidak memancing undi calon atau calon-calon dalam pilihanraya dengan menaikkan bendera PERMAS dan mempamerkan gambar Tun Rahman di rumahnya, maka tiada pelanggaran peraturan am 91(1)(g) telah berlaku. Juga, ia telah dihujahkan bagi pihak defendan bahawa memandangkan plaintif adalah pemilik rumah dan ketua keluarganya, isterinya Hajjah Fatimah dan adik lelakinya semestinya telah mendapatkan kebenarannya atau sekurang-kurangnya persetujuannya untuk menaikkan dua item yang tidak sepatutnya dalam rumahnya. Mahkamah ini tidak bersetuju dengan penemuan ini. Berdasarkan keadaan keterangan di hadapan jawatankuasa berkaitan pertuduhan pertama, penemuan positifnya adalah tidak munasabah, yang mana ianya tiada justifikasi kukuh yang mana satu badan ahli-ahli yang munasabah dapat capai (lihat perenggan 42–44, 47).

(4) Atas pertuduhan kedua, berdasarkan fakta bahawa asas dakwaan terhadap plaintif atas pertuduhan ini adalah bahawa beliau telah: (a) membuat salinan-salinan artikel tersebut; dan (b) mengedar artikel tersebut dalam Jabatan dengan niat menunjukkan bahawa Kerajaan Negeri Sarawak di bawah kepimpinan Yang di Pertua Ketua Menteri telah berlaku tidak adil terhadapnya, dan berdasarkan fakta bahawa jawatankuasa tersebut mendapati tiada keterangan untuk mengukuhkan dakwaan dalam (a) atau (b) kepada pertuduhan, adalah munasabah untuk membuat kesimpulan bahawa jawatankuasa tersebut tidak mendapati pertuduhan ini telah dibuktikan terhadap plaintif meskipun terdapat penemuan 'positif' atas pertuduhan ini (lihat perenggan 49).

(5) Dakwaan bahawa plaintif dilihat di majlis perkahwinan memakai songkok putih dengan lencana PERMAS membentuk pertuduhan tambahan terhadap plaintif. Jawatankuasa tersebut telah mengambilkira perkara-perkara yang tidak relevan dan lain daripada pertuduhan ketiga dan telah membuat penemuan positif berhubung perkara yang mana plaintif tidak dikenakan pertuduhan dalam pertuduhan ketiga. Dengan berbuat demikian jawatankuasa tersebut telah melakukan satu kesilapan prosedur yang memprejudiskan plaintif memandangkan beliau tidak mengetahui bahawa jawatankuasa tersebut akan bertindak dengan keterangan sedemikian (lihat perenggan). Ia tidak terbuka kepada jawatankuasa tersebut untuk mengambilkira dan selepas itu bertindak atas keterangan tersebut tanpa mengikut prosedur yang dinyatakan dalam k 26(6) (lihat perenggan 53 & 55).

(6) Pertuduhan keempat hendaklah dibatalkan kerana tidak mematuhi prosedur, yang mana, ia berkaitan dengan satu kejadian yang dikatakan telah berlaku pada 16 April 1987 yang mana ianya satu tarikh di luar

tempoh yang dilindungi oleh pertuduhan itu, iaitu 6 April 19897 dan 14 April 1987. Justeru itu keterangan tentang plaintif yang telah memandu kereta dengan gambar Tun Rahman melekat di atasnya tidak relevan dengan pertuduhan. Sewajarnya, apa yang dilakukan oleh plaintif di luar tempoh tersebut tidak relevan kepada pertuduhan dan patut dikecualikan dan tidak bertindak berdasarkannya oleh jawatankuasa tersebut dalam proses membuat keputusannya (lihat perenggan 58–59).

(7) Berdasarkan apa yang dinyatakan k 26(1)(b), memandangkan plaintif telah dimaklumkan dalam surat tunjuk sebab defendan bahawa tindakan tatatertib akan diambil terhadapnya di bawah k 26(1)(b), plaintif telah diberi notis bahawa tindakan tatatertib sebegini diambil terhadapnya yang membawa kepada pemecatannya jika dakwaan terhadapnya dibuktikan. Ia terbuka untuk plaintif mengemukakan kepada defendan hukuman yang sesuai untuk dikenakan ke atasnya apabila menulis surat tunjuk sebabnya terhadap pertuduhan-pertuduhan yang dibuat terhadapnya. Jika beliau memilih tidak berbuat demikian maka beliau tidak boleh didengar untuk mengadu kemudian bahawa beliau tidak diberikan peluang untuk didengar atas hukuman yang dikenakan ke atasnya jika pertuduhan-pertuduhan tersebut dapat dibuktikan (lihat perenggan 69–70).]

Notes

For cases on dismissal of public servants, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 732–766.

Cases referred to

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369 (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l Perumal [2001] 2 MLJ 417 (refd)

Pan Global Textiles Bhd, Pulau Pinang v Ang Beng Teik [2002] 2 MLJ 27 (refd)

Petroliam Nasional Bhd v Nik Ramli Nik Hasan [2004] 2 MLJ 288 (refd)

Legislation referred to

Government of Sarawak General Orders general order 91(1)(g)

Public Service Commission Rules 1964 rr 23(1), 26(1)(b), (9)

Cheng Hui Hong (Cheng & Cheng Advocates) for the plaintiff.
Supian Tarmizi (State Attorney-General Chambers, Sarawak) for the defendant.

Clement Skinner J:

[1] Haji Said Haji Bujang ('the plaintiff') was formerly an Assistant Director, Grade A9 at the Lands and Surveys Department, Kuching.

[2] On 1 April 1988 he was dismissed from service of the State Government of Sarawak by the defendant, The Public Service Commission of the State of Sarawak ('the defendant') in the circumstances described below. The plaintiff's dismissal followed disciplinary proceedings instituted against him by the defendant.

[3] The parties agreed to the following facts of the case:

(1) The plaintiff joined the Sarawak Civil Service in January 1956 as a Junior Technical Assistant with the Lands and Surveys Department, Kuching.

(2) He was dismissed from service with effect from 1 April 1988 for contravening GO 91(1)(g) of the Sarawak General Orders (Revised 1 May 1965). At the time of his dismissal the plaintiff was holding the post of an Assistant Director with the Lands and Surveys Department, Kuching. He was due to retire at the age of 55 years by 26 October 1989.

(3) Disciplinary action was taken against the plaintiff by the defendant pursuant to r 26(1)(b) of the State Public Service Commission Rules 1964, and a Committee of Inquiry was appointed to conduct a hearing fixed on 16 November 1987 and its function was to inquire and make a Report pertaining to the charge against the plaintiff.

(4) The plaintiff denied the charge against him in his letter to the Secretary of the defendant dated 8 August 1987.

(5) The Committee of Inquiry, headed by a sessions court judge, with four other persons sat for two days (ie 16 November 1987 and 23 November 1987) and thereafter presented its report to the defendant on 4 January 1988.

(6) By letter dated 11 March 1988 the defendant informed the plaintiff that he was found guilty of the charge in breach of GO 91(1)(g) of the Sarawak General Orders (Revised 1 May 1965) and decided that the plaintiff be dismissed with effect from 1 April 1988.

(7) By letter dated 21 March 1988, the plaintiff appealed to the defendant for reconsideration of the punishment meted out and brought up to the attention of the defendant two issues, namely:

   (i) the defendant was in breach of r 26(9) of the Sarawak Public Service Commission Rules for failing to communicate to the plaintiff the decision on each charge preferred against him;

   (ii) that r 23(1) provides various forms of punishment, and he pleaded for an alternative punishment ie retirement.

A (8) The defendant replied in its letter dated 16 April 1988 stating that it had considered the plaintiffs appeal at its meeting on 2 April 1988 and decided to reject it, and affirmed its earlier decision.

B **[4]** The plaintiff, being dissatisfied with the defendant's decision has filed this suit in which he seeks the following relief:

(a) a declaration that the decision made by the defendant terminating the service of the plaintiff as Assistant Director of the State Land and Survey Department with effect from 1 April 1988 is null and void;

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(b) damages against the defendant to be assessed by the court;

(c) such further or other relief as may be just and equitable; and

(d) costs.

D

[5] In the trial before me the plaintiff called two other witnesses apart from himself. They were his wife Hajjah Fatimah bte Hj. Hasbi ('PW3') and his brother Haji Latip bin Haji Bujang ('PW2'). These same witnesses gave evidence on behalf of the plaintiff before the Committee of Inquiry.

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[6] The defendant called five witnesses. They were Mr. Lai Hua Lee ('DW1'), Mr Chung Soon Chiong ('DW2'), Encik Shamshudin bin Bolhi ('DW3'), Encik Safarin Bin Abdullah ('DW4') and Encik Zaidi Khaldin Zainie bin Abdul Latip ('DW5'). They are or were officers in the Lands and Surveys Department at the material time in 1987. These same witnesses gave evidence on behalf of the defendant before the Committee of Inquiry.

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[7] All these witnesses repeated before me, more or less, the evidence they had given before the Committee of Inquiry.

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[8] In addition to the facts which were agreed to between the parties, from the evidence led before me I find the following additional background facts are relevant to this case.

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[9] In 1978 the plaintiff was promoted to an Assistant Director of Lands and Surveys and on 23 May 1984 he was appointed an Acting Deputy Director of the Lands and Surveys Department. On 26 December 1984 as a result of a discussion held between the Minister in charge of Land and Land Revenue and the Director of Lands and Surveys, the Director issued instructions regarding changes of duties of certain officers in the department with effect from 2 January 1985. One such change involved the plaintiff and Encik Zaidi Khaldin Zainie bin Abdul Latip ('DW5') an Assistant Director. The change was that from 2 January 1985, Encik Zaidi Khaldin would

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continue to act as Deputy Director of Lands and Surveys while the plaintiff would be the Assistant Director in charge of Border Survey between Indonesia and Malaysia and perform any other duties to be assigned to him by the Director.

[10] With the changes being made, the plaintiff considered himself as being passed over in terms of appointment for the post of a Deputy Director and that since he was now only functioning as Assistant Director, his duties had been reduced. So the plaintiff wrote to the defendant on the matter on 2 January 1985. On 20 May 1985 the defendant wrote back to the plaintiff refusing to change or review its decision not to let the plaintiff act in the post of Deputy Director and gave its reasons for its decision.

[11] According to the plaintiff in his evidence before the Committee of Inquiry, after the change of duties on 2 January 1985 he was only allocated with demarcation and border surveying duties. No other duties were assigned to him. He was also no longer invited to attend monthly staff meetings which were normally attended by the Director, Deputy Director, all Assistant Directors, Senior Superintendents and all Scale A officers.

[12] In April 1987 an election was held in Sarawak to elect members to the State Legislative Assembly. Polling day was held on 16 April 1987. It seems that there was a political party called PERMAS in Sarawak (I am not told its proper or full name) of which one Tun Rahman, a former Governor of Sarawak, was its President. Apparently PERMAS fielded candidates in the election, opposing the candidates fielded by the Barisan Nasional coalition of parties in Sarawak.

[13] By letter dated 14 July 1987 the plaintiff was informed by the defendant that following a report received against him, the defendant, after due consideration, had decided to bring disciplinary action against the plaintiff under r 26(1)(b) of the Sarawak Public Service Commission Rules 1964. The charge against the plaintiff read as follows:

(1) That you, as Assistant Director, A9, in the Lands and Surveys Department Kuching, did, during the campaign period of the State Election 1987 between 6 April 1987 and 14 April 1987, involve yourself in political activities, including campaigning for candidates of PERMAS Party, in that you had:

(a) exhibited or caused to be exhibited or allowed to be exhibited posters or stickers which bear the slogans of PERMAS PARTY and

photograph of the President of the Party on the wall of your house and hoisted or caused to be hoisted the flag of PERMAS in front of your house at Jalan Abong Taip;

(b) made copies of an article 'The Truth', which was published in the Sarawak Tribune on 13 April 1987 and distributed copies of the article to the staff at the Headquarters and Divisional Offices of the Lands and Surveys Department with the intention of drawing the attention of the staff of the Department that the Barisan Nasional Government under the leadership of the Honourable Chief Minister, Sarawak, was not fair to you;

(c) during the campaign period had openly campaigned in the Lands and Surveys Department among the staff to vote for PERMAS candidates on 16 April 1987;

(d) used your own motor vehicle KF2121 to transport voters on 16 April 1987 to cast their votes and had decorated your car with the flag and photograph of the President of PERMAS party.

[14] After sitting for two days to enquire into the above counts, the Committee of Inquiry arrived at the following findings:

(a) On the first count.

(1) There was ample credible but circumstantial evidence to establish that the accused party Tuan Haji Said Haji Bujang had displayed or exhibited or caused to be displayed or exhibited or allowed to be displayed or exhibited, the flag of a political party PERMAS and a picture of Tun Rahman, President of the said political party.

(2) There was however no evidence that there were posters of the said political party displayed or exhibited.

(b) On the second count.

(1) There was credible evidence to establish that just before the State Election on 16th April 1987, in the Lands and Surveys Department Headquarters, Kuching, the accused party Tuan Haji Said Haji Bujang had, in his possession, care or custody, copies of an article called 'The Truth' published in the Sarawak Tribune dated 13th April 1987 and that he had distributed two copies each of the same to Mr. Chung Soon Chiong PW2 and Lai Hua Lee PW3 both of whom were and still are officers of the Lands and Surveys Department, Kuching.

(2) However, there is no evidence that he had made or was concerned in making copies of the same for the purpose of distribution with the aim of showing or suggesting that the State Government of Sarawak had been unfair to him as alleged.

(c) On the third count.

(1) There was no evidence to show that the accused party Tuan Said Haji Said Haji Bujang had openly campaigned in his office by calling or asking some or any employees of his department to vote for the candidates of PERMAS party alleged in count (c) of the charge.

(2) However, there is evidence to show that on or about 12 April 1987 he was seen at a wedding party at Jalan Haji Kassan, Kuching to be wearing a white songkok with a PERMAS badge on it and the said party was attended by Encik Zaidi K Zainie PW1 and Encik Edward Aloi PW4 both officers of the Lands and Surveys Department, Kuching.

(d) On the fourth count.

(1) There is some evidence that on 16th April, 1987, the accused party Tuan Haji Said Haji Bujang had driven his private car, a Mercedes Benz, Registration number KF2121 which had affixed thereto a picture of Tun Rahman President of a political party PERMAS.

(2) There is however no evidence to show or suggest that there was a PERMAS flag affixed to the said car or that the accused party had used the said car to carry voters for the purpose of voting for a political party as alleged.

[15] Based on its findings the Committee of Inquiry came to the following conclusion and reported to the defendant:

> In the unanimous opinion of the Committee, the overall but cumulative effects arising from the above positive as opposed to the negative findings of fact can only lead to the inevitable conclusion that the accused party Tuan Haji Said Bujang, in the period just before the State Election on 16th April, 1987 had been involved or must be deemed to have been involved in political activities. In the circumstances, the Committee is fully satisfied that he has therefore breached the terms specified in GO 91(1)(g) accordingly.

[16] It was on the basis of the Committee of Inquiry's above finding that the defendant informed the plaintiff by its letter of 11 March 1988 that he had been found guilty of the charges under GO 91(1)(g) and that the defendant had decided to dismiss him from service with effect from 1 April 1988.

[17] As I said earlier, following his dismissal from service the plaintiff wrote to the defendant on 21 March 1988 appealing for reconsideration of the punishment meted out to him, but the defendant refused to do so. Hence this case.

[18] In a nutshell, it is the plaintiffs case that his dismissal was without legal justification and unlawful.

[19] At the commencement of the trial the parties agreed that the following issues arise for determination by the court:

1. Whether the dismissal of the plaintiff was without legal justification, unlawful and was therefore null and void in that:

   (a) the plaintiff was not afforded a complete and reasonable opportunity to be heard before the decision to dismiss was made;

   (b) the decision on each of the four counts against the plaintiff was not communicated to him by the Commission as required by r 26(9) of the Public Service Commission Rules 1964;

   (c) the decision was manifestly erroneous on the face of the Record as there was no credible evidence on which to incriminate the plaintiff on the four counts preferred against him;

   (d) whether the Commission failed in its statutory duty under the Rules that the plaintiff must be given the opportunity of being considered for an alternative punishment under r 23(1) of the Public Service Commission Rules 1964.

I now consider each of the issues in turn.

(a) Was the plaintiff afforded a complete and reasonable opportunity to be heard before the decision to dismiss was made?

[20] In considering this issue I wish to make it clear that I will not deal here with one of the plaintiffs complaint i.e. he was not given the opportunity of being considered for an alternative punishment. This complaint properly forms part of the fourth issue raised for decision and will be dealt with under that head. Neither will I say anything at this stage about the plaintiff's complaint that there was procedural impropriety on the part of the

Committee of Inquiry when it considered evidence extraneous to two of the four counts with which he was charged. I will address that complaint when I consider the third issue.

[21] Subject to what I have to say later on about the two matters just mentioned, from my assessment of proceedings which were held before the Committee of Inquiry, I find the plaintiff was properly informed of the four counts that were preferred against him. The four counts were also stated with sufficient clarity and particulars. The plaintiff was also given sufficient time and proper opportunity to meet those charges. Further, there has been no complaint, whether before me or before the Committee of Inquiry that the Committee was not properly constituted or was constituted or consisted of members who had an interest in the outcome of the inquiry.

[22] With regard to the procedures adopted at the enquiry itself, I do not find any irregularity there. The plaintiff was represented by a lawyer of his choice, he was given an opportunity to address the Committee of Inquiry and produce documents and witnesses. So the plaintiff can have no cause to complain that he was not afforded a complete and reasonable opportunity to be heard before the decision to dismiss him was made.

(b) Was the decision on each of the four counts preferred against the plaintiff communicated to him by the Commission as required by r 26(9) of the Pubic Service Commission Rules 1964?

[23] Rule 26(9) states:

> The decision on each charge preferred against the accused officer shall be communicated to him by the Secretary, but not the reasons for the decision.

[24] It is not disputed that when the defendant informed the plaintiff of his dismissal from service in the defendant's letter of 11 March 1988, the Secretary of the defendant had informed the plaintiff that *'... adalah soya diarah untuk memaklumkan bahawa Suruhanjaya Perkhidmatan Awam Negeri telah mangkaji dan menimbangkan laporan daripada Jawatankuasa Penyiasat, dilantik di bawah Peraturan 26 (2), yang mendapati bahawa titan bersalah atas beberapa tuduhan melanggar Perintah Am 91(1)(g), dan Suruhanjaya Perkhidmatan Awam Negeri bersetuju dengan keputusan Jawatankuasa itu...'.*

[25] It is the defendant's contention that there was only one charge preferred against the plaintiff and that when it informed the plaintiff of the defendant's decision on that charge in its letter of 11 March 1988, it had fully complied with r 26(9).

[26] Counsel for the defendant argued that the plaintiff was charged for breach of GO 91(1)(g) which reads:

> (1) Except as provided in paragraph (3) no officer shall take part in or carry on any political activities which, inter alia, include:
>
> (g) engaging in canvassing in support of a candidate or candidates at an election.

[27] Accordingly it is the defendant's case that there was only one charge preferred against the plaintiff of involvement or carrying on political activities and that paragraphs (a), (b), (c) and (d) of the charge described or particularised the activities undertaken by the plaintiff during the period specified in the charge, which amounted to a breach of GO 91(1)(g). According to counsel, although these activities specified in the charge were described as 'counts', in reality, they were particulars of the activities which if the plaintiff were found to have undertaken, would have established the charge preferred against him. I do not agree. In my judgment whether only one charge or several charges were preferred against the plaintiff should be decided by looking at the substance rather than the form of words used by the defendant.

[28] Whilst I agree that the plaintiff was charged for breach of GO 91(1)(g) it is clear to me from the substance of the allegations made against him, that the plaintiff is accused of having breached GO 91(1)(g) in each of the 4 ways specified in the four (4) counts mentioned in the charge. Thus, as counsel for the defendant himself stated in his submissions, any of the incriminating activities mentioned in count (a), (b), (c) or (d) would, if proved, have been a violation of GO 91(1)(g) as they show that the plaintiff was either campaigning for the candidates of PERMAS or indulging in political activities.

[29] Accordingly I find that even though the defendant had informed; the plaintiff that he faced one charge, in substance each of the four counts constituted a charge preferred against him.

[30] I should also point out that from a reading of the Report submitted by the Committee of Inquiry at p 125 of BD, the Committee held a similar view. After referring to the charge preferred against the plaintiff the Committee said:

> As can be seen the charge contains four counts as enumerated in paragraph (a), (b), (c) and (d) respectively. *They consist of different* but related incidents alleged to be attributed to Tuan Haji Said Haji Bujang... It seems to be the prosecuting party's

case that *the allegations* as specified in the four counts, *either jointly or severally, constitute a breach of the terms of the General Orders, in particular GO 91(1)(g)....*

[31] Since the defendant had in substance preferred four charges against the plaintiff, he should have been informed of the decision on each of the four charges. In failing to do so the defendant had acted in breach of r 26(9) of the Public Service Commission Rules 1964. In this sense, the plaintiff has not been accorded the procedural fairness envisaged in the Rules.

(c) Whether the defendant's decision to dismiss the plaintiff was manifestly erroneous on the face of the record as there was no credible evidence on which to incriminate the plaintiff on the four counts preferred against him.

[32] In deciding this issue, I agree with counsel for the defendant that this court or rather this trial is not being held to re-hear the whole case and the charges preferred against the plaintiff to investigate whether the charges preferred against the plaintiff is proven. I agree that disciplinary control of the plaintiff is vested by art 35 of the State Constitution on the defendant. I agree with counsel for the defendant that the court's jurisdiction is supervisory in nature and akin to a process of judicial review to ensure that the decision of the defendant was lawful.

[33] In *Petroliam Nasional Bhd v Nik Ramli Nik Hasan* [2004] 2 MLJ 288 at pp 293–294, the Federal Court described the extent of the court's supervisory jurisdiction injudicial review proceedings;

Now, the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 has taken a bold step in the area of administrative jurisprudence. It has, to some extent, unshackled the Malaysian Judiciary from the traditional constrains of judicial review which have plagued the courts in the United Kingdom and other Commonwealth countries. The Federal Court, in a majority decision, has held, inter alia, that injudicial review proceedings, the courts have the following powers:

(a) to review the decision of a tribunal on the merits;

(b) to substitute a different decision in place of that tribunal's decision without remitting it to the tribunal for re-adjudication; and

(c) to order consequential relief.

[34] The Federal Court also went on to point out that injudicial review proceeding the court's power to examine the merits or substance of a public decision maker is an exceptional power which would only arise where the factual matrix of a case warranted it. At p 294 the Federal Court said:

Here, I would endorse the observation made by Mr Chew Chin Thye in his article entitled *The Role of article 8 of the Federal Constitution in the Judicial Review of Public Law in Malaysia* when he said:

> It should also be noted that the Federal Court in *Rama Chandran* emphasized very carefully that the power of the court to examine the merits or substance of a decision of a public decision maker is an exceptional circumstance that will arise only when the factual matrix of a case required it. Otherwise, the general rule that the court will not enquire into the merits before a public decision maker still holds.

[35] The test as to when the courts can intervene to review the decision of an inferior tribunal or disciplinary authority is that the tribunal or authority has committed an error of law or its findings is so devoid of any plausible justification that no reasonable body of persons would have reached them (see the Federal Court decision in *Pan Global Textiles Bhd, Pulau PinangvAng Beng Teik* [2002] 2 MLJ 27 at p 42).

[36] As to what constitutes an error of law, I refer to the Federal Court decision in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369 at p 391 where the court said:

> In *Syarikal Kenderaan Melayu Kelantan Bhd v Transport Workers' Union*, the Court of Appeal correctly recognised that *Anisminic* had done away with the distinction between errors of law that go to jurisdiction and errors that do not. We are of the opinion that the following extract from the judgment of the Court of Appeal accurately declares the present state of the law ([1995] 2 MLJ 317 at p 342):
>
> > An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function, has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern whether the error of law is jurisdictional or not. If an inferior tribunal or other public decision-taker does make such an error, then he exceeds his jurisdiction. So too is jurisdiction exceeded, where resort is had to an unfair procedure (see *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis* [1995] 1 MLJ 308), or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision.
> >
> > It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an *Anisminic* error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

> Since an inferior tribunal has no jurisdiction to make an error of law, its decisions will not be immunized from judicial review by an ouster clause however widely drafted.

With that I now turn to consider the findings of the Committee of Inquiry on each of the counts preferred against the plaintiff.

The first count

[37] On the first count the plaintiff was charged with doing four things, namely:

(a) exhibiting or causing to be exhibited or allowing to be exhibited on the wall of his house (i) posters or (ii) stickers with slogans of PERMAS party and (iii) photograph of the President of PERMAS; and

(b) (iv) hoisting or causing to be hoisted or allowing to be hoisted the PERMAS flag in front of his house.

[38] Of the four matters complained of against him the Committee of Inquiry found '*ample credible but circumstantial evidence*' to establish only two things, namely, that the plaintiff had displayed or exhibited or caused to be displayed or exhibited or allowed to be displayed or exhibited:

(i) the flag of PERMAS; and

(ii) a picture of Tun Rahman, President of PERMAS

(hereafter referred to as 'the two offending items').

[39] Since it was only on its positive findings, (as opposed to its negative findings), which the Committee of Inquiry relied on in arriving at its decision, I will confine myself to the above positive findings made by the Committee in its decision making process.

[40] What is immediately noticeable about the process by which the Committee of Inquiry arrived at its positive findings on this count is that while the Committee found '*credible but circumstantial evidence*' (which the Committee never identified) to establish that the plaintiff '*had displayed or exhibited or caused to be displayed or exhibited or allowed to be displayed or exhibited*' the two offending items, the Committee could only have relied on the evidence adduced before it to arrive at such a fnding on this count. But a perusal of the notes of proceedings recorded at the inquiry shows that:

(a) no evidence was led before the Committee through any of the witnesses called by the prosecuting party to say that they had either seen the plaintiff himself putting up for display or exhibition the two offending items or that such witnesses were in possession of evidence to show that the plaintiff had either caused or allowed to be put up for display or exhibition the two offending items;

(b) the only evidence there was on the matter on the prosecuting party's side of the case came from Zaidi K Zainie (PWl in the inquiry) who said that on calling the plaintiff to his office to inform him about the complaint received on the matter, the plaintiff had admitted that he had put up the two offending items because he (the plaintiff) felt the government had been unjust to him and that the only way was to support the new opposition party ie PERMAS;

(c) as opposed to what Zaidi K Zainie had said, evidence was led on behalf of the plaintiff before the Committee of Inquiry that it was Hajjah Fatimah bte Hj Hasbi, the wife of the plaintiff and Hj Latip bin Haji Bujang, the elder brother of the plaintiff who had put up the two offending items;

(d) it was the evidence of the plaintiff himself before the Committee of Inquiry that when he was called to Zaidi K Zainie's office on the matter he had categorically denied putting up the PERMAS flag and Tun Rahman's photograph at his house. So what Zaidi K Zainie said about the plaintiff admitting to putting up the two offending items stood contradicted by the plaintiff in his evidence and the Committee never said that they disbelieved the plaintiff or rejected his evidence on this point;

(e) that it was the plaintiffs evidence before the Committee of Inquiry that the two offending items were put up by his wife and brother. The plaintiff further stated in his cross-examination that although he is the registered owner of the house and he is the head of his household, his wife and brother did not consult him when they put up the two offending items. In fact it is the plaintiffs evidence in his cross-examination that he pulled down the PERMAS flag but he could not force his wife not to put it up again;

(f) that it was Hajjah Fatimah bte Hasbi's evidence before the Committee of Inquiry that at the material time, she was a lecturer at the Teachers' Training College at Batu Lintang. Hajjah Fatimah said that even though the plaintiff did not want her to do so, she put up the two offending items with the help of her brother-in-law as she felt she lived in a democratic country and was free to support any political party of her choice without involving her husband. In her cross-examination Hajjah Fatimah confirmed that the plaintiff was against her putting up the two

offending items and had asked her to take them down and that when she did not do so, he took down the PERMAS flag but she put it up again. Hajjah Fatimah also explained in her cross-examination that she felt her husband had been victimised in his department and that she supported PERMAS party because Tun Rahman was its President.

[41] Given the state of the evidence adduced before the Committee of Inquiry relating to the first count, the evidence of the plaintiff and particularly that of his wife Hajjah Fatimah, if believed, would indicate or establish that the plaintiff had neither displayed or exhibited nor caused to be displayed or exhibited nor allowed to be displayed or exhibited the 2 offending items. The Committee of Inquiry never said that they did not believe what Hajjah Fatimah or the plaintiff or his elder brother had said on the matter.

[42] Quite apart from the above the plaintiff would only be in breach of GO 91(1)(g) if by allegedly displaying or exhibiting or causing to be displayed or exhibited or in allowing to be displayed or exhibited the two offending items at his house, the plaintiff was *engaging in canvassing in support of a candidate or candidates at an election.*

[43] But the Committee of Inquiry did not ask itself any questions about whether what the plaintiff is alleged to have done amounted to canvassing in support of a candidate or candidates at an election? In my judgment it was important for the Committee of Inquiry to ask themselves the necessary questions in this regard or to make some finding in that regard because if the plaintiff was not canvassing in support of a candidate or candidates at an election by hoisting the PERMAS flag and displaying a photograph of Tun Rahman at his house, then no breach of GO 91(1)(g) had occurred at all. Instead what the Committee of Inquiry said was that the plaintiff *'had been involved or must be deemed to have been involved in political activities'*. But on what basis was the Committee able to say this given the state of the evidence before it on the first count?

[44] Before me it was submitted on behalf of the defendant that since the plaintiff was the owner of the house and head of his household, Hajjah Fatimah and his brother must have had his approval or at least his tacit approval to put up the two offending items since no court would seriously think that the plaintiff, a highly capable officer and senior civil servant in the Lands and Surveys Department, would submit to the wishes of his wife and brother and had lost control of his wife's then activities to the extent that he was subjected to her wishes. I do not agree.

[45] The evidence before the Committee of Inquiry and also before me shows that the plaintiff did not agree with what his wife had done and had in fact taken down the PERMAS flag but the wife had put it up again. So it is not correct to say that he had lost control over his wife's activities and was subject to her wishes.

[46] I also do not find anything objectionable about Hajjah Fatimah exercising her democratic right to support a political party of her choice and in putting up the two offending items to show her support of the party and its President in that way. Hajjah Fatimah is an educated lady and at the material time was a lecturer in a teachers' training college and would be fully capable of making her own decision, as she says she did, to support a political party of her choice and of showing her support in the way she did. Any notion that the plaintiff should have 'controlled' his wife not to do so is unacceptable and must be rejected as unreasonable.

[47] In the circumstances I find that given the state of the evidence before the Committee of Inquiry relating to the first count, its positive findings on the first count is unreasonable, in the sense that it is so devoid of any plausible justification that no reasonable body of persons would have reached it.

The second count

[48] On the second count the plaintiff was accused of making copies of a newspaper article *The Truth'*, which was published in the Sarawak Tribune on 13 April 1987 and of distributing copies of it to the staff at the Headquarters and Divisional offices of the Lands and Surveys Department with the intention of showing to the staff of the Department that the Barisan Nasional Government under the leadership of the Honourable Chief Minister, Sarawak, was not fair to him. On the evidence presented to it, the Committee of Inquiry found that while the plaintiff had in his possession, care or custody copies of the article mentioned, and that he had distributed two copies of it to two officers at the Lands and Surveys Department, Kuching, there was no evidence that the plaintiff had made copies of the article concerned for the purpose of distribution with the aim of showing that the State Government of Sarawak had been unfair to him as alleged.

[49] Given the fact that the substance of the accusation against the plaintiff on this count was that he had (a) *made* copies of the article and (b) had *distributed* the article in the Department with the *intention* of showing that the State Government of Sarawak under the leadership of the Honourable Chief Minister was unfair to him, and given the fact that the Committee of Inquiry had found no evidence to substantiate either of the accusations in (a) or (b) of the charge, it is reasonable to conclude that the Committee of

Inquiry did not find this count proved or established against the plaintiff despite its 'positive' findings on this count.

[50] Accordingly it is my view that there was no credible evidence on which to incriminate the plaintiff on this second count.

The third count

[51] On this count the plaintiff was accused of having campaigned in the Lands and Surveys Department among the staff to vote for the PERMAS candidates on 16 April 1987, but the Committee of Inquiry found that there was no evidence to establish this count. That should have been the end of the matter relating to the third count but the Committee of Inquiry went on to make a finding against the plaintiff on a matter he was never charged with. The Committee found that on 12 April 1987 the plaintiff was seen at a wedding party wearing a white songkok with a PERMAS badge on it.

[52] It will be recalled that in its report to the defendant, the Committee of Inquiry had informed the defendant that in the 'unanimous opinion of the Committee, the overall but cumulative effects arising *from the above positive* as opposed to the negative findings of fact can only lead to the inevitable conclusion that the accused party Tuan Haji Said Haji Bujang, in the period just before the State Election on 16 April 1987 had been involved or must be deemed to have been involved in political activities. In the circumstances, the Committee is fully satisfied that he has therefore breached the terms specified in GO 91(1)(g) accordingly'.

[53] It is clear to me from what the Committee said in the passage just quoted above that it had, in its decision making process taken into account evidence in respect of a matter the plaintiff was never charged with. The Committee of Inquiry had taken into account matters extraneous and irrelevant to the third count and had made positive findings on a matter the plaintiff was never charged with in the third count. In doing so I find the Committee of Inquiry had committed what is described as a procedural impropriety which had severely prejudiced the plaintiff since he was not to know that the Committee of Inquiry would act on such evidence. In fact the accusation that the plaintiff was seen at a wedding party wearing a white songkok with a PERMAS badge on it constituted an additional charge against the plaintiff.

[54] A reading of r 26(6) of the Rules of the Public Service Commission 1964 shows that '*if during the course of the inquiry, grounds for framing of additional charges against the accused officer are disclosed, the Committee shall*

inform the Commission, and the Commission shall follow the same procedure in framing additional charges as was adopted in framing the original charges'.

[55] In my judgment it was not open to the Committee of Inquiry to consider and thereafter act on the evidence relating to the plaintiff being seen at the wedding party wearing a white songkok bearing a PERMAS badge on it, without following the procedures laid down in r 26(6).

The fourth count

[56] The accusation here against the plaintiff under this count was that he had: (a) used his car KF2121 to transport voters on 16 April 1987 to cast their votes; and (b) had decorated his car with the flag and photograph of Tun Rahman the President of PERMAS Party.

[57] However, on the evidence before it the Committee of Inquiry found that there was no evidence to show that the plaintiff had used his car to carry voters on 16 April 1987 or that there was a PERMAS flag affixed to his car. But the Committee did find that there was some evidence that the plaintiff had driven his car on 16 April 1987 which had a picture of Tun Rahman affixed to it.

[58] Mr Cheng Hui Hong of counsel for the plaintiff contends that the positive finding of the Committee of Inquiry on the fourth count must be struck down for procedural impropriety, in that, it relates to an event which allegedly took place on 16 April 1987 which is a date outside the period covered by the charge ie between 6 April 1987 and 14 April 1987. Hence the evidence about the plaintiff having driven a car with Tun Rahman's picture affixed to it was irrelevant to the charge. I agree.

[59] It must not be overlooked that GO 91(1)(g) which the plaintiff is alleged to have breached, prohibits him from engaging in canvassing in support a candidate(s) at an election and it was the defendant who had decided to charge the plaintiff with involving himself in political activities during a very specific period of time, namely, during the campaign period of the State Election 1987 which the defendant itself specified to be between 6April 1987 and 14 April 1987. Accordingly, what the plaintiff did outside the period of 6 April 1987 to 14 April 1987 is irrelevant to the charge and should have been excluded and not acted on by the Committee of Inquiry in its decision making process. That the Committee was well aware that it was only concerned with enquiring into that period of time from 6 April 1987 to 14April 1987 is welt illustrated in the last paragraph of its Report to the defendant where it said that in the '*unanimous opinion of the Committee, the overall but cumulative effects arising from the above positive as opposed to the*

negative findings of fact can only lead to the inevitable conclusion that the accused party Tuan Haji Said Haji Bujang, in the period just before the State Election on 16 April 1987 had been involved or must be deemed to have been involved in political activities'.

[60] Thus the positive finding of the Committee of Inquiry on this count suffers from the same infirmity as its positive finding on the third count i.e. about the plaintiff attending a wedding party wearing a white songkok with a PERMAS badge on it. In having acted on such evidence, the decision making process of the Committee of Inquiry on this count is flawed for procedural impropriety.

[61] Quite apart from the above, under this count the plaintiff was accused of having decorated his car KF2121 with a photograph of Tun Rahman, but no evidence was led before the Committee of Inquiry that he had done so. The plaintiffs own evidence on the point was that there could have been a photograph of Tun Rahman on his car which was put there by either his wife of brother. It was the evidence of Haji Latip Bin Hj. Bujang ie the plaintiffs elder brother that it was he who had put Tun Rahman's picture on the car and that it was Haji Latip who had used the car on 16 April 1987 until 5pm that day. The evidence of PW5 at the inquiry, one Shamshuddin Bolhi shows that on 16 April 1987 he went to a PERMAS polling booth at Jalan Patinggi Ali Kuching at about 5pm to fetch his wife from the booth, when he saw the plaintiff stop his car near the polling booth and collect a big umbrella from the booth. Encik Bolhi said he saw a poster of Tun Rahman on the car driven by the plaintiff. But that is not what the plaintiff is charged for. Here the relevant part of the fourth count states that the plaintiff decorated his car with the picture of Tun Rahman, of which there is no evidence that he had done so. Further, to be in breach of GO 91(1)(g) the purpose of is having done so must be to canvass for candidates at an election. The Committee of Inquiry did not make any finding in this regard.

[62] Accordingly the Committee of Inquiry had in its decision making process taken into account a positive finding on a matter i.e. that the plaintiff had driven his car KF2121 which had affixed to it a picture of Tun Rahman, when that is not what he was charged with.

[63] For all the reasons given above I find that the positive findings arrived at by the Committee of Inquiry on each of the 4 counts, whether they are viewed individually or cumulatively, cannot be supported in law in that they are either unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at them or they were reached as a result of procedural impropriety. Consequently the final conclusion of the Committee of Inquiry and that of the defendant as well, that the plaintiff had involved

himself in political activities and had breached GO 91(1)(g) suffers from the same infirmity.

(d) Whether the Commission failed in its statutory duty under the Rules of giving the plaintiff an opportunity of being considered for an alternative punishment under r 23(1).

[64] It is the case of the plaintiff that r 23(1) which is the punishment section, confers on the defendant the right to impose at least nine different forms of punishment on finding the charge(s) proved against him, ranging from dismissal to reprimand or fine. Further, under sub-s (2) of r 23(1), the defendant can be ordered to retire in the public interest. The plaintiff contends that before the defendant can decide on what punishment to impose on him, he should have been given an opportunity to be heard on the matter. The plaintiff complains that he was not afforded such an opportunity in this case, when he was informed of his dismissal in the defendant's letter of 11 March 1988.

[65] The issue of whether or not a disciplinary authority such as the defendant is required to give a person such as the plaintiff an opportunity to be heard before it imposes any form of punishment is fairly well settled. In*Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l Perumal* [2001] 2 MLJ 417 the Federal Court held:

> Article 135(2) of the Constitution prescribes that the respondent can only be dismissed if he has been given a reasonable opportunity to be heard. The letter to the respondent to show cause dated 31 January 1991 conveyed with sufficient clarity and certainty the contemplated punishment namely dismissal or reduction in rank. In essence, the undoubted overall effect of the show cause letter illustrated that the respondent had at the earliest available moment been informed of the two possible punishments under consideration should he not exculpate himself of the charge made. He had been accorded every opportunity to defend himself. This was in fact what the respondent did by a letter dated 7 February 1991.

[66] Applying the rationale in the decision of the *Utra Badi* case, if the plaintiff in this case was given sufficiently clear notice in the show cause letter sent to him by the defendant of what the contemplated punishment would be if he does not exculpate himself of the charge made against him, then he has no right to be heard before the contemplated punishment is imposed since he had been accorded every opportunity defend himself.

[67] Reverting to the facts of this case, the critical question for decision is whether the defendant had in its show cause letter sent to the plaintiff dated 14 July 1987, given the plaintiff sufficiently clear notice that the contemplated punishment to be imposed on him was dismissal?

[68] Having read the show cause letter sent to the plaintiff I find that the overall effect of the letter is that the plaintiff was clearly informed that the defendant having considered the information received by it against the plaintiff, it was satisfied that disciplinary action should be taken against him under r 26(1)(b) of Public Service Commission Rules 1964. The plaintiff was also informed that pursuant to r 26(1)(b), he was given an opportunity to make written representation within 21 days to exculpate himself of the charge mentioned in the show cause letter failing which the defendant would proceed to make its decision on the matter on the evidence available to it.

[69] Reference must now be made to r 26(1)(b) to see what that sub-rule states. It states:

> (b) The Commission shall arrange such preliminary investigation as it may consider necessary; and if it considers that the facts, if proved, would justify the accused officer's dismissal from the public service, it shall, after consulting the Attorney-General regarding the terms of the charge or charges, forward to the officer a statement of the charge or charges passed against him, together with a brief statement of the allegations on which each charge is based in so far as they are not clear from the charges themselves.

In view of what the rule states since the plaintiff was notified in the defendant's show cause letter that disciplinary action was being taken against him under r 26(1)(b), the plaintiff had been put on notice that such disciplinary action was being taken against him with a view to his dismissal if the allegations against him were proved.

[70] It was open to the plaintiff to have addressed the defendant on the appropriate punishment to be imposed on him when he wrote his letter to show cause against the charges(s) made against him. If he chose not to do so, then he cannot be heard to complain later that he had not been afforded an opportunity to be heard on the punishment to be imposed on him if the charge(s) are proved.

[71] In the result, despite my finding on the first and last issue, I find that the factual matrix in this case warrants the examination of the decision of the

A Committee of Inquiry on the merits. Having done so I find that the dismissal of the plaintiff was without legal justification, unlawful and hence null and void.

B [72] Accordingly there will be judgment in favour of the plaintiff. I grant the plaintiff a declaration that his dismissal from service by the defendant as an Assistant Director of the Lands and Surveys Department Sarawak with effect from 1 April 1988 was unlawful, null and void. I order that damages be paid to the plaintiff by the defendant, such damages to be assessed by the Deputy Registrar. I also award the plaintiff costs to be taxed if not agreed to.

C

Declaration granted.

Reported by Loo Lai Mee

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